

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Angelica M Loreto,

Plaintiff,

v.

Arizona Board of Regents,

Defendant(s).

No. CV 22-00269-TUC-JAS (DTF)

**ORDER**

**DISCUSSION**

Pending before the Court is a Report and Recommendation (Doc. 17) issued by United States Magistrate Judge Ferraro. The Report and Recommendation recommends granting Defendant's motion to dismiss (Doc. 11) while giving Plaintiff leave to amend the complaint. Plaintiff filed objections to the Report and Recommendation.<sup>1</sup>

As a threshold matter, as to any new evidence, arguments, and issues that were not timely and properly raised before United States Magistrate Ferraro, the Court exercises its discretion to not consider those matters and considers them waived. *United States v. Howell*, 231 F.3d 615, 621-623 (9th Cir. 2000) ("[A] district court has discretion, but is not required, to consider evidence presented for the first time in a party's objection to a magistrate judge's recommendation . . . [I]n making a decision on whether to consider newly offered evidence, the district court must . . . exercise its discretion . . . [I]n providing for a *de novo* determination rather than *de novo* hearing, Congress intended to permit

<sup>1</sup> Unless otherwise noted by the Court, internal quotes and citations have been omitted when citing authority throughout this Order.

1 whatever reliance a district judge, in the exercise of sound judicial discretion, chose to  
2 place on a magistrate judge's proposed findings and recommendations . . . The magistrate  
3 judge system was designed to alleviate the workload of district courts . . . To require a  
4 district court to consider evidence not previously presented to the magistrate judge would  
5 effectively nullify the magistrate judge's consideration of the matter and would not help to  
6 relieve the workload of the district court. Systemic efficiencies would be frustrated and the  
7 magistrate judge's role reduced to that of a mere dress rehearsal if a party were allowed to  
8 feint and weave at the initial hearing, and save its knockout punch for the second round . .  
9 . Equally important, requiring the district court to hear evidence not previously presented  
10 to the magistrate judge might encourage sandbagging. [I]t would be fundamentally unfair  
11 to permit a litigant to set its case in motion before the magistrate, wait to see which way  
12 the wind was blowing, and—having received an unfavorable recommendation—shift gears  
13 before the district judge.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9<sup>th</sup> Cir.  
14 2003) (“Finally, it merits re-emphasis that the underlying purpose of the Federal  
15 Magistrates Act is to improve the effective administration of justice.”).

16 Assuming that there has been no waiver, the Court has conducted a *de novo* review  
17 as to Plaintiff’s objections. *See* 28 U.S.C. § 636(b)(1)(C) (“Within fourteen days after  
18 being served with [the Report and Recommendation], any party may serve and file written  
19 objections to such proposed findings and recommendations as provided by rules of court.  
20 A judge of the court shall make a *de novo* determination of those portions of the report or  
21 specified proposed findings or recommendations to which objection is made. A judge of  
22 the court may accept, reject, or modify, in whole or in part, the findings or  
23 recommendations made by the magistrate judge. The judge may also receive further  
24 evidence or recommit the matter to the magistrate judge with instructions.”).

25 In addition to reviewing the Report and Recommendation and any objections and  
26 responsive briefing thereto, the Court’s *de novo* review of the record includes review of the  
27 record and authority before United States Magistrate Judge Ferraro which led to the Report  
28 and Recommendation in this case.

1           Upon *de novo* review of the record and authority herein, the Court finds Plaintiff's  
2       objections to be without merit, rejects those objections, and adopts United States  
3       Magistrate Judge Ferraro's Report and Recommendation. *See, e.g., United States v.*  
4       *Rodriguez*, 888 F.2d 519, 522 (7<sup>th</sup> Cir. 1989) ("Rodriguez is entitled by statute to *de novo*  
5       review of the subject. Under *Raddatz* [447 U.S. 667 (1980)] the court may provide this on  
6       the record compiled by the magistrate. Rodriguez treats adoption of the magistrate's report  
7       as a sign that he has not received his due. Yet we see no reason to infer abdication from  
8       adoption. On occasion this court affirms a judgment on the basis of the district court's  
9       opinion. Affirming by adoption does not imply that we have neglected our duties; it means,  
10      rather, that after independent review we came to the same conclusions as the district judge  
11      for the reasons that judge gave, rendering further explanation otiose. When the district  
12      judge, after reviewing the record in the light of the objections to the report, reaches the  
13      magistrate's conclusions for the magistrate's reasons, it makes sense to adopt the report,  
14      sparing everyone another round of paper."); *Bratcher v. Bray-Doyle Independent School*  
15      *Dist. No. 42 of Stephens County, Okl.*, 8 F.3d 722, 724 (10<sup>th</sup> Cir. 1993) ("*De novo* review  
16      is statutorily and constitutionally required when written objections to a magistrate's report  
17      are timely filed with the district court . . . The district court's duty in this regard is satisfied  
18      only by considering the actual testimony [or other relevant evidence in the record], and not  
19      by merely reviewing the magistrate's report and recommendations . . . On the other hand,  
20      we presume the district court knew of these requirements, so the express references to *de*  
21      *novo* review in its order must be taken to mean it properly considered the pertinent portions  
22      of the record, absent some clear indication otherwise . . . Plaintiff contends . . . the district  
23      court's [terse] order indicates the exercise of less than *de novo* review . . . [However,]  
24      brevity does not warrant look[ing] behind a district court's express statement that it engaged  
25      in a *de novo* review of the record."); *Murphy v. International Business Machines Corp.*, 23  
26      F.3d 719, 722 (2<sup>nd</sup> Cir. 1994) ("We . . . reject Murphy's procedural challenges to the  
27      granting of summary judgment . . . Murphy's contention that the district judge did not  
28      properly consider her objections to the magistrate judge's report . . . lacks merit. The judge's

1 brief order mentioned that objections had been made and overruled. We do not construe  
 2 the brevity of the order as an indication that the objections were not given due  
 3 consideration, especially in light of the correctness of that report and the evident lack of  
 4 merit in Murphy's objections."); *Gonzales-Perez v. Harper*, 241 F.3d 633 (8th Cir. 2001)  
 5 ("When a party timely objects to a magistrate judge's report and recommendation, the  
 6 district court is required to make a *de novo* review of the record related to the objections,  
 7 which requires more than merely reviewing the report and recommendation . . . This court  
 8 presumes that the district court properly performs its review and will affirm the district  
 9 court's approval of the magistrate's recommendation absent evidence to the contrary . . .  
 10 The burden is on the challenger to make a *prima facie* case that *de novo* review was not  
 11 had."); *Brunig v. Clark*, 560 F.3d 292, 295 (5<sup>th</sup> Cir. 2009) ("Brunig also claims that the  
 12 district court judge did not review the magistrate's report *de novo* . . . There is no evidence  
 13 that the district court did not conduct a *de novo* review. Without any evidence to the  
 14 contrary . . . we will not assume that the district court did not conduct the proper review.").<sup>2</sup>

## 15 CONCLUSION

16 <sup>2</sup> See also *Pinkston v. Madry*, 440 F.3d 879, 893-894 (7th Cir. 2006) (the district court's  
 17 assurance, in a written order, that the court has complied with the *de novo* review  
 18 requirements of the statute in reviewing the magistrate judge's proposed findings and  
 19 recommendation is sufficient, in all but the most extraordinary of cases, to resist assault on  
 20 appeal; emphasizing that "[i]t is clear that Pinkston's argument in this regard is nothing  
 21 more than a collateral attack on the magistrate's reasoning, masquerading as an assault on  
 22 the district court's entirely acceptable decision to adopt the magistrate's opinion . . .");  
 23 *Garcia v. City of Albuquerque*, 232 F.3d 760 (10th Cir. 2000) ("The district court's order  
 24 is terse . . . However, neither 28 U.S.C. § 636(b)(1) nor Fed.R.Civ.P. 72(b) requires the  
 25 district court to make any specific findings; the district court must merely conduct a *de*  
 26 *novo* review of the record . . . It is common practice among district judges . . . to [issue a  
 27 terse order stating that it conducted a *de novo* review as to objections] . . . and adopt the  
 28 magistrate judges' recommended dispositions when they find that magistrate judges have  
 dealt with the issues fully and accurately and that they could add little of value to that  
 analysis. We cannot interpret the district court's [terse] statement as establishing that it  
 failed to perform the required *de novo* review . . . We hold that although the district court's  
 decision is terse, this is insufficient to demonstrate that the court failed to review the  
 magistrate's recommendation *de novo*"); *Goffman v. Gross*, 59 F.3d 668, 671 (7<sup>th</sup> Cir.  
 1995) ("The district court is required to conduct a *de novo* determination of those portions  
 of the magistrate judge's report and recommendations to which objections have been filed.  
 But this *de novo* determination is not the same as a *de novo* hearing . . . [I]f following a  
 review of the record the district court is satisfied with the magistrate judge's findings and  
 recommendations it may in its discretion treat those findings and recommendations as its  
 own.").

1 Accordingly, IT IS HEREBY ORDERED as follows:

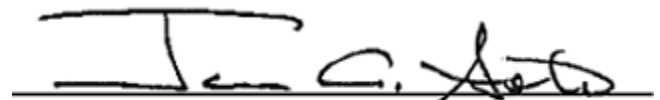
2 (1) United States Magistrate Judge Ferraro's Report and Recommendation is accepted  
3 and adopted in its entirety.

4 (2) Plaintiff's objections are rejected.

5 (3) Defendant's motion to dismiss is granted.

6 (4) Plaintiff may file an amended complaint on or before January 6, 2023.

7 Dated this 1st day of December, 2022.

8  
9  
10 

11 Honorable James A. Soto  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28